S.B.CRIMINAL LEAVE TO APPEAL NO.314/2006
(State of Rajasthan Vs. Tikama Ram & ors.)

DATED : 30.11.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.L.Bhati, Public Prosecutor

Having heard the learned Public Prosecutor and having examined the impugned judgment and order dated 22.07.2006, this Court is of opinion that the view taken by the learned Addl. Sessions Judge (Fast Track) Balotra cannot be said to be unjustified and there appears no reasonable ground to grant leave to appeal.

The accused were tried for the offences under Sections 147, 148, 149, 341, 323, 326 and 307 IPC on the allegation of forming unlawful assembly and rioting by use of force and violence; and while restraining the injured Kirta Ram causing him grievous hurt by sharp weapon like Kulhari which if having resulted in death, they would have been guilty of murder. The learned Sessions Judge upon a thorough examination of the entire evidence on record has found that the prosecution has failed to establish that the injury in question was dangerous to life. On the basis of evidence, learned Sessions Judge has convicted the accused Tikama Ram for the offences under Sections 147, 148, 341, 323, 324

IPC, the accused Samela Ram under Sections 147, 148, 341, 323 and 324/149 IPC and other accused Gemara Ram and Chanana under Sections 147, 148, 341 and 323 IPC and has released them on probation while directing that they shall make payment of an amount of Rs.1,000/- each towards compensation; and has awarded compensation to the injured. It appears that the matter of fifth co-accused Ashok is pending before the Juvenile Court.

From the observations made by the learned trial Judge on the medical evidence including the statements of PW-19 Dr.Narendra Kumar, PW-20 Dr.Sunil Garg and PW-15 Dr.A.K.Goyal, it appears that their testimony cannot be accepted in proof of the fundamental fact if the injury No.1 on the person of the injured was dangerous to life? PW-19 Dr.Narendra Kumar has admitted to have noted in the report Ex.P/17 that details be obtained from the hospital in which the patient was admitted to and that all the details of injuries were not available before him because the patient was admitted in the hospital at Jodhpur. PW-20 Dr.Sunil Garg has deposed that the patient was treated by Dr.N.Bhargava; and that the patient was never seen by him. PW-15 Dr.A.K.Goyal has extended opinion on the basis of X-ray plate referred by the medical jurist. Obviously, the prosecution has omitted to produce the relevant witness like the treating doctor in proof of

the fundamental fact about the injury being dangerous to life. Then, the learned Sessions Judge has noticed the statement of the Investigating Officer that challan under Section 307 IPC was filed only because the head injury was of grievous nature though it did not appear in his investigation whether the injury was dangerous to life or not?

In the overall facts and circumstances of the case and for want of relevant evidence, the view taken by the learned Sessions Judge obviously appears to be one of the possible views ruling out any scope for interference in appeal at the instance of the State.

The petition for leave to appeal is, therefore, rejected.

(DINESH MAHESHWARI),J.

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